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Equality rights: Charter or Code?

The image shows the front cover of the Canadian Charter of Rights and Freedoms. At the top is the Royal Coat of Arms. Below it, the title "CANADIAN CHARTER OF RIGHTS AND FREEDOMS" is prominently displayed. Underneath the title is a row of stylized human figures in various colors. The cover is divided into sections with headings: "Guarantee of Rights and Freedoms", "Fundamental Freedoms", "Democratic Rights", "Mobility Rights", "Legal Rights", "Equality Rights", "Official Languages of Canada", "Minority Language Educational Rights", and "Enforcement". At the bottom, there is a signature and the date "1982".

by Jeff Hoffman

On April 17, 1985, the equality rights section (s.15) of the Charter of Rights and Freedoms comes into force. Many questions have been raised about the effect this will have on the Ontario Human Rights Commission and its supporting legislation, the *Human Rights Code*, 1981.

The *Ontario Human Rights Code* was first enacted in 1962 and was revised and extended in 1981. The Code prohibits discrimination in the areas of employment, accommodation, contracts, services, goods and facilities, and vocational associations on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, marital status, family status, handicap, age (18 and over in all areas except employment, in which case the Code protects individuals between the ages of 18 and 65), record of offences (in employment, where an individual has been pardoned under the *Criminal Records Act*, or convicted of a provincial offence) and receipt of public assistance (in accommodation only). The Code further prohibits harassment because of sex and other grounds in accommodation and in employment. (Employment-related harassment can occur away from the workplace).

The 'equality rights' provisions of the *Canadian Charter of Rights and Freedoms* are expressed in sections 15, 27 and 28. Section 15 contains substantive or fundamental equality provisions, s.28 refers to sex equality and s.27 refers to the preservation and enhancement of the multicultural heritage of Canadians.

Section 15(1) of the Charter reads in part:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination...

The reason for describing equality rights in such broad terms as 'equality before the law', 'equality under the law', 'equal protection of the law' and 'equal benefit of the law' is to avoid limiting the definition to any

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Court Decides Sexual Harassment Case

The Divisional Court of the Supreme Court of Ontario became the first court in Canada to consider whether sexual harassment in the workplace constituted discrimination against women in contravention of Canadian human rights legislation. The case involved the complaints of six women at *Commodore Business Machines Limited*. The six women took their complaints to the Ontario Human Rights Commission which, after investigation and attempts at conciliation, requested the Minister of Labour to appoint a board of inquiry.

The board of inquiry, after many days of hearing, found that Mr. DeFilippis, a foreman at *Commodore*, repeatedly touched and kissed the six women, asked for invitations to their homes and requested that they engage in sexual intercourse. When the women refused his advances, he shouted at them, found fault with their work and shifted them to heavier duties, with the result that some quit and one was fired.

On the basis of these findings, the board concluded that these women had been discriminated against in contravention of the *Ontario Human Rights Code*, which prohibited dismissal and discrimination with respect to terms or conditions of employment because of an employee's sex. The board accordingly ordered Mr. DeFilippis and his employer, *Commodore Business Machines*, to pay approximately

\$21,000 to the women in compensation for lost wages, mental anguish and interest. Mr. DeFilippis was ordered to stop his sexual harassment of female employees, and *Commodore Business Machines* was ordered to do whatever was necessary to ensure that Mr. DeFilippis ceased his conduct.

The company and Mr. DeFilippis appealed the decision of the board of inquiry to the Supreme Court of Ontario, Divisional Court. The Divisional Court, after listening to arguments from counsel, rendered a decision upholding the decision of the board of inquiry.

Of chief importance is the fact that this is the first time a court in Canada has considered whether sexual harassment constitutes sex discrimination. The Court, in deciding this matter in the affirmative, reached a decision that is of

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Une autorité morale qui tient du "gros bon sens" plutôt que du harcèlement

par François Bergeron

Depuis le 15 juin 1984, le Code des droits de la personne de l'Ontario prévaut sur toutes les autres lois de la province. À mesure qu'il devient mieux connu, la Commission des droits de la personne, présidée par le chanoine Borden Purcell, que *L'Express de Toronto* a rencontré cette semaine, reçoit de plus en plus de demandes d'intervention. Cette "industrie des droits de l'homme", comme on l'appelle parfois par dérision, n'a toutefois pas que des admirateurs. L'an dernier, en déposant un budget anti-inflationniste spectaculaire, le gouvernement Bennett de la Colombie-Britannique a purement et simplement aboli sa Commission des droits de la personne!

Adopté en 1981 et modifié à quelques reprises depuis, le Code ontarien proclame que «toute personne a droit à un traitement égal en matière de services, de biens ou d'installations, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine

ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial ou une infirmité».

Certains articles mentionnent aussi la discrimination fondée sur «l'état d'assisté social», pour le traitement

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Profile of Aileen Anderson

by Howard Jones

Commissioner Anderson was appointed to the Ontario Human Rights Commission for a three-year term on February 19, 1984. Born in Winnipeg, she moved to London, Ontario where she attended the University of Western Ontario, receiving a B.A. degree in general arts as well as completing a year of intensive business courses. She moved to Toronto and became a trainee supervisor at Simpson's, and then an assistant buyer.

Ms. Anderson brings to us a wealth of experience gained from her participation in a wide variety of community activities. She has been actively involved with the Hospital for Sick Children, Queen Street Mental Health Centre, Etobicoke Social Planning Council, Etobicoke Board of Education, Youth Employment Service, the Rexdale Planning Centre, and other organizations.

She has a great interest in cultural activities, particularly those aimed at children and young women. These include the fields of opera, theatre and ballet.

She also has had a particular concern for the education system, and has served five consecutive terms as an elected trustee with the Etobicoke Board of Education. She was chosen by the board to be its representative on the Metropolitan School Board and was appointed a member of the advisory Committee to the Ministry of Education on general legislative grants.

Ms. Anderson has found working with the commission to be an exciting and rewarding experience. She feels that the most vital area where people need human rights protection is race relations. Her experience, particularly with the commission, on



race relations and policing, is very helpful to the other commissioners when they are discussing and deciding issues affecting visible minorities.

She is an optimist who believes that most people are well intentioned. Unfortunately, they often pursue their personal goals without appreciating the needs of others, which can result in misunderstandings and conflicts. In addition, many people learn inappropriate attitudes that result in prejudice and discrimination.

Summing up the working philosophy of the commission, Ms. Anderson uses the words 'fairness' and 'balance'. Fairness is the basic principle behind all decisions and activities of the commission, she says. It believes firmly in dealing impartially with respondents and complainants, and does not favour one side or the other.

Ms. Anderson currently lives in Etobicoke and, in addition to being a human rights commissioner, works as a real estate agent. She is married and has four children.

Howard Jones is Executive Officer, Ontario Human Rights Commission.

Equality rights: Charter or Code?

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one particular phrase that might, in turn, be restricted in its application.

Section 15(1) continues...

...and in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

In keeping with the broad scope of the Charter, the list of protected grounds in s.15 is not exhaustive. The determination of what other grounds may be included in 'equality rights' is left open to judicial consideration. This is in contrast with the Code, where the list of prohibited grounds is proscribed and protection is extended only to those areas cited in Part One.

The Constitution, of which the Charter is an integral part, is the supreme law of Canada. The *Human Rights Code* must therefore conform to the provisions of the Charter. Where conflicts exist, the Charter prevails.

For example, it might be argued that the age limitations in the *Human Rights Code* (18 and 65 in employment) denies those under 18 and over 65 years of age the equal benefit of the law. If this is so, then it would still be open to the government that these age limits are defensible as a 'reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society.'

It was not the intention of the drafters of the Charter to supersede provincial human rights statutes. Rather, the Charter was intended to be the guiding principle by which rights and freedoms must be regarded in Canada and to reinforce existing rights by giving them the weight of the Constitution.

The Charter and the Code must establish jurisdictional boundaries that complement their abilities to resolve cases of alleged infringement or denial of rights. It has been suggested that the Charter will apply to discrimination resulting from provincial or federal legislation and governments while the Code will be directed towards redressing discrimination in the private sector and in the public sector at the provincial level. Thus, executive or legislative action by the provincial government may be challenged under either the Charter or the Code since both apply to, and bind, the Crown.

The Charter and the Code provide very different routes, and both have their advantages and disadvantages. As a starting point, the individual seeking a remedy under the Charter must bring an action in a court, and the individual alleging a contravention of the *Human Rights Code* must file a complaint with the Ontario Human Rights Commission. The commission processes the complaint, thus avoiding the often prohibitive costs of pursuing a case through the courts. A second advantage of the commission route is that both parties to a complaint are given ample opportunity to discuss and respond to allegations and to conciliate in a non-adversarial atmosphere. Third, the commission functions not only to redress discriminatory acts but to promote a climate of understanding and mutual respect for the rights of

each individual. The settlements arrived at in cases conducted under the Code reflect the commission's preventive educative and remedial goals.

Settlements may include, among other things, monetary compensation for lost wages, general damages for mental anguish and insult to dignity, an offer of employment, an offer of reinstatement or next available job, revision of management policies and practices letter of apology, letter of reference, letter of assurance to the commission of compliance with the spirit and letter of the Code and the posting of a Human Rights Management Policy Statement.

The commission often goes beyond the particulars of an individual case to examine the causes of discriminatory actions in the workplace or the community and to resolve them through enforcement of the Code, public education or the mediation resources of the Race Relations Division.

Section 15(2) of the Charter enables the government to engage in affirmative action programs to improve the conditions of disadvantaged individuals or groups. Section 15(2) ensures that affirmative action programs are an acceptable approach to rectifying systemic discrimination and that they are not seen as discriminatory.

The Code contains a provision similar to s. 15(2) of the Charter. Section 13(1) of the Code states that a person's rights to equal treatment without discrimination under Part 1 of the Code is not infringed by the implementation of a special program. The presence of the affirmative action principle in federal and provincial legislation reaffirms a commitment to promote these programs in both the public and private sectors.

The enforcement of the equality rights section of the Charter can only serve to enhance the mechanisms currently in place to protect human rights in this country. A conflict may be encountered where the Code gives narrow protection to a right generally applied in the Charter. For example, as mentioned earlier, age discrimination in employment is protected only between the ages of 18 and 65 in the Code, whereas there is no mention of specific age limits in the Charter. Similarly, the Code permits exceptions for membership in athletic organizations or participation in an athletic activity according to sex. This may be challenged under ss. 28 or 15(1) of the Charter, particularly where the government is involved in the funding of sport facilities and programs.

The *Canadian Charter of Rights and Freedoms* will not in any way diminish the importance of the *Human Rights Code*. Instead, it will serve as an additional safeguard in the protection of the rights of Canadians.

Jeff Hoffman is currently a second year law student at the University of Windsor, and worked with the commission during the summer of 1984.

From the Affirmation mailbox

Dear Sirs:

You have sent to me unsolicited a copy of your publication *Affirmation*. You have asked for my comments.

I am firmly opposed to racism, sexism and discrimination in every form. I strongly support the women's movement.

However, having read your publication from cover to cover I consider that the paranoid and belligerent attitudes expressed therein do more to harm than to help your cause.

I am appalled at your legislation that gives you the right to be investigator, prosecutor, judge and jury of all complaints made to you.

I feel that your cause is better promoted by appeals to reason than by threats of persecution and gleeful reports of punishment meted out by you and other similar commissions in Canada.

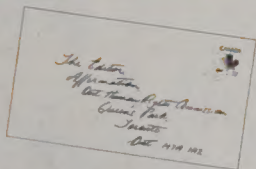
Please take my name off your mailing list. You have my permission to publish this letter.

Yours very truly,

Hubert W. Hogle, LL.B.
Napanea, Ontario.

Editor's Note: Mr. Hogle is in serious error if he assumes that the Code gives the Ontario Human Rights Commission the power to be 'investigator, prosecutor, judge and jury.' The commission's objective is to settle a complaint by conciliation and, if this fails, to determine whether there is sufficient evidence to send the case to a board of inquiry, which is independent of the commission and over whose decision the commission has no influence whatsoever.

Incidentally, Mr. Hogle writes of 'your legislation'. The *Human Rights Code* is a law passed by the Ontario legislature, not a set of rules issued by the commission.



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Editorial

The rights of children

Dr. P.J. Galasso, of the Faculty of Human Kinetics, the University of Windsor, has published a fascinating study entitled, *The Rights of Children in Organized Sport*.

His main thesis is that children, when they are delivered to coaches and little leagues, to school teams, and the like, pass into the control of people other than their parents or teachers and frequently are treated with sharply diminished regard for their individual rights. They become part of a machine where the main objective is winning for the school, league or team (or for the coach, for that matter). The person of the child, in his or her total physical or psychological integrity, all too often plays but a secondary role.

The number of children taking part in these programs is in the hundreds of thousands, writes Professor Galasso. 'How can we ignore an area that affects so many children and citizens of tomorrow? The depth to

which participation imprints our children is also of concern.' He quotes J.H. Duthie, who reminds us that, 'Children acquire the rudimentary skills of their culture from others through imitation, and play serves to consolidate these acquisitions. In the process of consolidation, play also transforms these culturally accepted patterns into new, exciting and different ways of behaving.'

The author, rather than propose a series of solutions to the questions he raises, merely puts them on the public agenda.

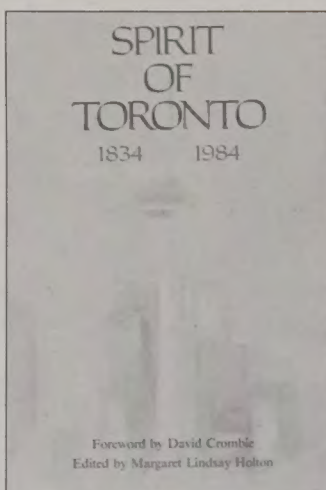
These questions do not fall under the *Human Rights Code, 1981* for they do not constitute issues of discrimination; still, they have to do with human freedom and dignity as contemplated in the *Canadian Charter of Rights and Freedoms* and, as such, they are part of the *spirit* of the Ontario Code as well. Professor Galasso is to be commended for asking questions that should be debated and answered.

Spirit of Toronto 1834-1984

Several years ago Margaret Lindsay Holton conceived an idea: to observe the sesquicentennial of our province's premiere city by publishing a book that would describe the multitude of religious faiths that together represent the spiritual fabric of Toronto.

In the process, Ms. Holton has collected no fewer than 31 accounts of religious communities. Each one is written by one or several representatives of the faith community, with the exception of Judaism; its account is authored by two university professors. This 'official' or officially endorsed series of descriptions has one particular advantage: it describes the faith as its adherents perceive it, and therefore accurately conveys both religious doctrine and its historical perspective.

But this method also has a serious disadvantage: it lacks all critical appraisal (for rarely did I find any self-critical portions to mar the perfect pattern), and it makes for very uneven and often dull writing. But having said that, it should be readily stated that the richness of our multi-faith society does shine through very clearly. It reaches from the Amerindians who preceded all other settlements to the most recent late-comers. 'You and I', writes Ms. Holton in her Foreword, 'are the custodians of this particular human community. We are by our lives the carriers of spirit both immediate and



eternal...we have in Toronto today the entire world on our doorstep.'

And our former mayor, now federal minister David Crombie writes, 'It's the idea of community that gives Toronto its special understanding in shaping people's day-to-day experiences in hope and freedom, something that has resulted in the essentially creative Toronto paradox: a more than usual respect for stability and order, and an extraordinary willingness to celebrate differences and extend tolerance...this is the secret of the spirit of Toronto.'

The book should be seen as a celebration of this special spirit.

Chairman's corner



This issue marks the end of my first term as chairman of the Ontario Human Rights Commission. However, I do not see this occasion as a time for retrospection, but rather as a time for looking ahead with enthusiastic anticipation.

I am greatly honoured to have been reappointed chairman for another three-year term, and I share the pleasure of my fellow commissioners in looking forward to a new and exciting era in human rights.

As part of our continuing effort to engage in dialogue with members of each community in the province, the commission launched the first in a series of community consultations on November 7, 1984, in London, Ontario. Close to 100 representatives of government, industry, ethnic, native and religious groups, media, union, academic and women's organizations from London, Samia, Chatham, Guelph, Kitchener, Waterloo, Brantford and Hamilton gathered to share and discuss common goals and issues of concern to the southwestern Ontario region. The success of, and feedback from, the evening reaffirms our belief in the inherent goodwill of the people of Ontario and bodes well for similar endeavours throughout the coming year.

Next month, on April 17, the long-awaited equality rights section (s. 15) of the *Canadian Charter of Rights and Freedoms* will take effect.

guaranteeing equal protection to Canadians and serving as a statement of standards below which certain conduct is not acceptable. Elsewhere in this issue, an article by Jeff Hoffman, who worked with the commission as a summer student in 1984, treats the impact that s. 15 will have on Ontario's human rights legislation. He writes, 'the Charter was intended to be the guiding principle by which rights and freedoms must be regarded in Canada and to reinforce existing rights by giving them the weight of the Constitution.'

There are those who would detract from the positive provisions of human rights legislation by viewing the Charter as yet another mechanism for curtailing freedoms. Justice F. H. Quigley of the Court of Queen's Bench, Alberta, in a recent decision on freedom of expression, stated that certain legislation cannot rationally be considered an infringement that limits freedom, but, on the contrary, it is a safeguard that promotes it, 'justifiable in a free and democratic society'. Equality will now mean recognizing differences, and will no longer refer strictly to treating everyone in the same way.

Dr. Dan Hill, Ombudsman for the province of Ontario, in his remarks delivered recently to the Canadian Institute for the Administration of Justice, echoed thoughts I expressed in a previous 'Chairman's corner' when he said: 'I believe that it is up to the government of a democratic society to protect the human rights and fundamental freedoms of its people. However, these rights and freedoms, so essential to the dignity of man, are only words and phrases without substance unless accompanied by effective government machinery that will implement them...I remain convinced that the human spirit is a force of positive good, which should give us occasion for hope and optimism.'

Barrier Free Design Centre

Ms. Lyn Sharpless of the Muscular Dystrophy Association writes us:

'In the past six months of operation, the Barrier Free Design Centre has encountered the long established problem of buildings that are inaccessible to wheelchair users and other disabled persons. Part of the difficulty is the lack of legislation guaranteeing access to all building types, the lack of adherence to existing legislation or a misunderstanding of the obligations imposed by legislation.

'We believe that the *Ontario Building Code* is not as effective in reducing the problem as it might be. There are a number of omissions and loopholes that often exempt various facilities from conforming. We are, therefore, preparing an analysis of other provincial, national and international codes to use as a tool to effect improvement to the Ontario legislation.

'In addition, we are beginning to document a variety of inaccessible buildings that fall into the following categories:.

1. New buildings that are not accessible, and have not adhered to the Building Code, even in its present state.
2. New buildings that have followed the basic minimum standards of Part 10 of the Code, but that are not, in fact, accessible.
3. Major renovations that required a judgement call by the local Buildings Department as to their need for compliance with Part 10, and that in your mind were incorrectly exempted.

'We would like to ask you to assist us by providing any addresses of buildings that you know of, that may fit into one of these criteria. Upon completion, we will forward our results to you. Thank you in advance for your co-operation. Together we may bring about changes to the Code that will ensure more accessible buildings in the future.'

A day for young people



Young people taking part last year in an orientation session of one of the Race Relations Division's programs geared especially to Ontario Youth.

Working together with community organizations in promoting ethnic and racial harmony in Ontario has always been the central thrust of the Race Relations Division of the Ontario Human Rights Commission

Young people in general, and visible minority young people in particular, are confronted with important issues that are difficult to resolve in a highly competitive society.

Recognizing the fact that these important issues have to be identified and appropriately addressed, the Race Relations Division co-sponsored, last summer, together with Tropicana Community Services Organization, a one-day symposium in Scarborough for youth to address its concerns and needs.

Tropicana, a community based voluntary organization, assists immigrants from Caribbean countries to integrate into the mainstream of society.

The symposium's objectives of:

- enhancing the leadership capacity of young people, as well as
- discussing young people's concerns in education, employment, family, law and their community, and

Court Decides Sexual Harassment Case

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significance for other Canadian jurisdictions. Since the complaints of the six women were filed, the *Ontario Human Rights Code* has been amended, and now specifically provides for the right to be free from sexual harassment. However, most other human rights statutes throughout the country still speak in terms of sex discrimination alone, and do not have a specific harassment provision.

The Court decided other issues that are of importance in other human rights cases. Counsel for the company had argued that his client had been denied the legal rights provided by section 11 of the *Canadian Charter of Rights and Freedoms*. However, section 11 only provides rights upon being charged with an offence, and the Court found that a complaint under the Code is not charging a person with an offence; therefore, section 11 has no application.

The manner in which the chairman of the board was appointed was also questioned, and the court concluded that any reasonable and right-minded person would not have any apprehension of bias. There was no evidence to suggest that there was any bias operating in the appointment of the board chairman.

The important question of similar fact evidence was also considered. The chairman had admitted and

- facilitating a dialogue between youth and agency people working to serve them in the pertinent matters.

were crystalized through this joint effort.

One hundred and fifty people participated. Two-thirds were young people and one-third were government and social services agency officials. The symposium allowed for an informative and creative dialogue which, in turn, helped to air and share young people's perspectives through workshops.

August 22nd was a hot and humid day; however, youth attending the conference remained enthusiastic throughout the symposium. 'Heated' discussion evolved around policing and parent-youth relations.

Youth Commissioner Ken Dryden, Race Relations Commissioners for the Province of Ontario Dr. Bhausaheb Ubale and Bev Salmon, President of the Tropicana Community Services organization Arnold Blackwood, Scarborough Mayor Gus Harris, Scarborough Controller Frank Faubert and former Metro Chairman Paul Godfrey attended the event.

relied on the evidence of other female workers at Commodore that they had been subjected to sexual harassment by Mr. DeFilippis. The Divisional Court held that the board chairman had properly admitted and considered this similar fact evidence.

There is no denying that it takes a long time for complaints of this nature to make their way through the legal system. These particular complaints not only had to be investigated, conciliated and considered by the commission, but they were the subject of 36 days of hearing at the board of inquiry, which included nine days of argument, 56 witnesses, 117 exhibits and 37 volumes of evidence and argument. One year later, the case was the subject of four days of argument and consideration at the Divisional Court. In spite of this very lengthy procedure, there is no doubt that this case will have an extremely important effect on many other cases, both in Ontario and across the country. It played an important role in educating the public about the phenomenon of sexual harassment and the fact that such conduct is prohibited by the law. It also determines several legal propositions that will have an impact on many other cases. Thus, cumbersome though the system may appear, the length of time and the amount of energy that was expended on this case must be balanced against the enormous impact the case is sure to have.

Thea Herman serves on the staff of the Attorney General and was formerly counsel to the Ontario Human Rights Commission.

Une autorité morale qui tient du "gros bon sens" plutôt que du harcèlement

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en matière d'occupation d'un logement, et «l'existence d'un casier judiciaire», pour l'emploi. «L'orientation sexuelle» n'est pas encore reconnue comme un critère de discrimination illégale, comme l'ont déjà demandé les homosexuels.

La langue maternelle non plus, comme le souhaiterait peut-être la minorité franco-ontarienne...

«Les francophones qui se croient lésés dans leurs droits peuvent toutefois faire appel à la Commission en utilisant les critères d'ascendance ou d'origine ethnique», indique le chanoine Purcell, en poste depuis deux ans à Queen's Park (la Commission des droits de la personne relève du ministère du Travail).

«En fait, dit-il, nous venons de nous pencher sur un cas de discrimination impliquant la langue: il s'agissait d'un anglophone du nord de la province qui se plaignait de s'être vu refuser un emploi par un francophone!

La critique

Malgré des intentions que tout le monde est sans doute prêt à qualifier d'honorables, une importante minorité de critiques — qui n'ont rien de «racistes» ou de «fascistes» — affirment que ce ne sont pas de telles initiatives qui amélioreront le sort des gens.

Des éditorialistes proches notamment du quotidien *The Toronto Sun*, et des économistes comme ceux de l'Institut Fraser en Colombie-Britannique, estiment également que de telles mesures représentent non seulement des dépenses inutiles et des bâtons dans les roues pour l'industrie et le commerce, mais aussi un danger d'érosion graduelle des libertés individuelles. Les commissaires gouvernementaux de droits de l'homme, de même que les animateurs de groupes sociaux ou ethniques qui réclament de telles protections constitutionnelles ou des mesures additionnelles comme des quotas d'embauche, sont d'ailleurs comparés par ces critiques à la «police de la pensée» de George Orwell dans son célèbre roman *1984*.

Et lorsque la question est posée directement aux citoyens, comme à la télévision dimanche soir dernier, ceux-ci répondent «non, les employeurs ne devraient pas être forcés d'embaucher quelqu'un dont ils ne veulent pas».

Autorité morale

Le chanoine Purcell — un individu jovial et accueillant qui ne correspond pas à l'image qu'on peut se faire d'un «policier de la pensée» — reconnaît les limites de son action et, d'ailleurs, des intentions du gouvernement provincial.

«Nous ne sommes pas si naïfs, dit-il. La Commission a des pouvoirs assez bien définis par la loi, mais son autorité reste surtout morale.» C'est aussi par la force des choses qu'il en est ainsi: plusieurs des dispositions de la loi sont tout simplement inapplicables ou exigeraient un personnel omniprésent et des ressources trop vastes.

Le président compare le Code des droits de la personne dans la société

à une voiture de police munie d'un radar stationnée en bordure de l'autoroute: «Même si vous ne roulez pas trop vite, vous ralentissez à la vue de la police, par prudence. Ainsi en est-il avec le Code: vous faite attention de ne pas favoriser la discrimination raciale ou ethnique ou contre les handicapés au travail ou en matière de logement ou de services.»

Le président est d'ailleurs chargé d'une mission éducatrice qui prend la majeure partie de son temps. L'an dernier, il a prononcé plus de 50 discours formels, participé à quelque 25 conférences importantes, et assisté à 400 événements «éducatifs» commandités par la Commission ou auxquels il était invité comme personne-ressource. En février 1985, il organise une conférence spéciale pour environ 75 chefs d'industries canadiennes, à qui il portera le message du respect des droits de l'homme et de l'harmonie raciale et sociale.

Les handicapés

Soixante-quinze pour cent des enquêtes de la Commission ontarienne (qui institue un comité ad hoc pour chacun des 1,200 cas par année qu'elle poursuit jusqu'au bout) ont rapport au marché du travail.

Et la cause numéro un de discrimination est le handicap physique. On trouve en second lieu le sexe (harcèlement et chauvinisme) et au troisième rang la discrimination raciale.

Plusieurs dizaines de milliers de demandes par année sont dirigées vers la commission, mais la plupart ne dépasse pas l'étape de la simple vérification par un ou deux coups de téléphone: l'employeur ou le propriétaire mis en cause réalise son erreur ou la personne à qui on a refusé un emploi ou un logement reconnaît qu'on était justifié de la faire.

M. Borden Purcell est particulièrement heureux d'indiquer que le temps de traitement des cas est à la baisse. «Lorsque ça prend deux ans pour redresser une injustice, les gens abandonnent et perdent confiance dans les autorités. Aujourd'hui assure-t-il, un cas compliqué prend rarement plus de six mois à traiter... et une affaire très simple peut prendre une heure!»

Plus facile que la charte

Le recours au Code des droits de la personne de l'Ontario est aussi plus rapide, plus simple et surtout beaucoup moins cher (c'est gratuit!) que le recours à une requête devant les tribunaux invoquant la Charte canadienne des droits et libertés.

La Charte canadienne prévaut sur tous les autres documents législatifs fédéraux ou provinciaux, mais ses clauses anti-discrimination s'appliquent strictement aux sociétés de la Couronne et aux ministères fédéraux. Le Code ontarien des droits de la personne s'applique, lui, à 90% de la population: aux agences provinciales évidemment, mais aussi à toutes les entreprises privées.

Reprinted, with permission, from *L'Express de Toronto*. August 21 - 27, 1984.